THE HONOURABLE SRI JUSTICE P.S.NARAYANA

W.P.No.15155 OF 2005

Dated: 14-09-2006

Between:
Vaddadi Ramanamma and another Petitioners

And

Municipal Corporation of Vijayawada, rep. by its Commissioner.

Respondent

THE HONOURABLE SRI JUSTICE P.S.NARAYANA

W.P.No.15155 OF 2005

ORDER:

1. This court issued Rule nisi on 13.07.2005 and made the following order in W.P.M.P.No.19272 of 2005.

> *"After hearing both sides and for the reasons explained in the affidavit filed in support of the petition, there shall be interim direction to the respondent not to further demolish any structure in Survey No.101/4 at Bhavanipuram, Vijayawada, until further orders."*

2. A counter affidavit was filed by moving the application-W.V.M.P. No.378 of 2006 and a reply affidavit was also filed.

3. Heard both the counsel.

4. The writ petition is filed for a writ of Mandamus declaring the action of the respondent in not permitting the petitioners to complete the erection of the compound wall along with gate in the property owned by the petitioners in Survey No.104/1 at Bhavanipuram, Vijayawada and on other hand seeking to demolish the wall as unconstitutional and consequently direct the respondent to permit the petitioners to complete the erection of the compound wall and pass such other suitable orders.

5. It is stated that the first petitioner and the mother-in-law of the second petitioner together purchased Ac.0.77 extent land in R.S.No.101/4 at Bhavanipuram, Vijayawada under registered sale deed on 01-03-1985. The other factual details also had been narrated. It is also stated that this site in Bhavanipuram is near to Krishna river and they had put up fencing to protect the land but the fence was taken

away by anti-social elements and they had decided to construct compound wall around the site. The said compound wall is meant to protect the site not only from the encroachers, erosion but also anti-social elements gathering near the Krishna river in the site. As no building was constructed, the petitioners just want to put up compound wall and when it was nearing completion the staff of the respondent corporation had stopped the construction and demolished the constructed compound wall for about 20 feet. At that stage, the petitioners requested the authorities not to demolish the constructed compound wall and they had filed a civil suit on the file of the Principal Junior Civil Judge, Vijayawada, which was rejected and not numbered on 05-07-2005. It is also stated that before filing the suit, the petitioners approached the corporation on 01-07-2005 and submitted a letter seeking permission to construct compound wall. Several other factual details also had been narrated in Paras 6,7 and 8 of the affidavit filed in support of the writ petition.

6. As already referred to supra, the interim order specified above had been made by this court.

7. In the counter affidavit filed by the respondent a specific stand was taken that the corporation had taken action for removal of the compound wall and the basement constructed unauthorisedly in the river bed at R.S.No.101/4 at Bhavanipuram, Vijayawada, which is protruding into the river obstructing the river flow. It is also stated that the averment of the petitioners that they had put up a fence to their site is not correct. In fact, the petitioners raised the land falling in the river course constructed the basement which is against rules and for which he had not taken any permission either from the respondent corporation or from the Irrigation Department. It is also stated that the land stated to have been though owned by the petitioners, as per the survey records the said land was never in the possession of the petitioners. Since the land is submerged for more than nearly 50 years and due to the recent depletion of the water level in river Krishna the

land is raised up. Taking Advantage of the low level of the river, the petitioners constructed the basement in brisk pace without obtaining any permission from the competent authorities. It is also pertinent to mention here that there were complaints from local residents complaining about the brisk activity that had been taking place in the night times for leveling the site which was submerged for more than 50 years. It is also stated that on receiving such complaints the staff of the respondent corporation inspected the site and taken up removal of unauthorizsed construction of basement and seized certain construction articles of the petitioners. It is further stated that the respondent corporation is not aware of the civil suit and return of the plaint stated to have been filed by the petitioners.

8. It is also further stated that the respondent corporation never received any letters from the petitioners seeking permission for construction of compound wall. In fact the petitioners commenced the construction all of a sudden that too in the night times with an intention to deceive the authorities concerned and attempted to raise the land and constructed the basement. It is also stated that the respondent corporation removed the illegal construction of compound wall and basement and seized certain articles used in the construction and the petitioners approached the respondent corporation on 4.7.2005 and given a letter of undertaking for non-taking up any construction on the said site and the corporation released the seized articles after collecting a fine of Rs.300/- which was paid by the second petitioner on 5-7-2005.

9. It is also stated that even after giving the letter of undertaking to the respondent corporation for not taking up construction work again the petitioners attempted for construction of basement which was also stopped by the staff of the respondent corporation on 8.7.2005. In such circumstances, a request is made to vacate the interim order.

10. A reply affidavit was filed reiterating the same stand taken in the affidavit filed in support of the writ petition. It was specifically

pleaded in Para 6 of the reply affidavit that as the fence of the barbed wire was removed by anti-social element, they decided to construct compound wall of 4 feet to protect it from encroachments and this construction is permissible and there is no need to seek any prior permission to tell about the title. It was also stated that it is not true to say that they had to take permission for raising protective compound wall. It is also further stated that the petitioners made application to the Mandal Revenue officer, Vijayawada Urban Mandal on 10-02-2005 seeking survey of the land to fix up the boundaries and give sketch of the land department for 2.31 acres and a challan for Rs.250/- was paid vide challan No.122486. After receiving this, the Mandal Surveyor came to the site and conducted a full-fledged survey and demarcated the land. This survey was done in the presence of all the affected parties. After demarcation the petitioners went ahead to take appropriate steps to protect the land. Several other factual details also had been narrated in Paras 6,7,8,9 and 10 of the reply affidavit.

11. In the light of the interim direction already made on 13-07-2005 in W.P.M.P.No.19272 of 2005 and also taking into consideration the respective stands taken by the parties in the affidavit filed in support of the writ petition, counter affidavit and also in reply affidavit, this court is of the considered opinion that the writ petition be disposed of with the following direction:

> The respondent not to proceed with any further demolition unless and until the respondent follows the due process of law. This court is not inclined to express any opinion whether permission is required relating to the construction of the compound wall in question or not. It is stated that already application is said to be pending before the respondent praying for permission for construction of compound wall, liberty is given to the respondent to consider the said application and dispose of the same in accordance with law at an early date.

12. With the above direction, the writ petition is disposed. No order as to costs.

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14-09-2006

Stp